Decision **PROPOSED DECISION OF ALJ MATTSON** (Mailed 11/14/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company To Revise Its Electric Marginal Costs, Revenue Allocation, and Rate Design. (U 39 M)	Application 04-06-024 (Filed June 17, 2004)

(See Appendix A for a list of appearances.)

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FINAL ORDER ON AGRICULTURAL CLASS DEFINITION AND TO CLOSE PROCEEDING

1. Summary

The purpose of this proceeding is to establish just and reasonable electric rates for Pacific Gas and Electric Company (PG&E or applicant) effective January 1, 2006. These rates allow applicant to collect the revenue requirement determined in Phase 1 of applicant's test year 2003 general rate case (GRC), as modified by subsequent revenue requirement decisions. This has largely been accomplished through two prior decisions in this proceeding. (See Decision (D.) 05-07-041 and D.05-11-___.)

The last remaining issue is the definition of the agricultural class. We find that a contested settlement on this issue is not in the public interest, and retain the existing eligibility statement for the agricultural class. The proceeding is closed.

2. Background

2.1. Application and Proposed Testimony

On November 8, 2002, PG&E filed its formal application for a test year 2003 GRC. The GRC is typically composed of two parts: Phase 1 to address revenue requirement issues, and Phase 2 to address rate design issues. On May 27, 2004, the Commission issued its decision on Phase 1 issues, and directed applicant to file a separate rate design application. (D.04-05-055.)

On June 17, 2004, applicant filed this application and supporting proposed testimony, including proposed revisions to the agricultural class. The August 27, 2004 Scoping Memo identified over 30 issues, and set evidentiary hearing to begin on May 23, 2005. The issues included: "The reasonable definition of the

agricultural class." (August 27, 2004 Scoping Memo, Attachment A, Issue 3.14, page 4.)

Five Public Participation Hearings were held in January and February 2005. Consistent with the adopted schedule, applicant served proposed supplemental, updated and rebuttal testimony, plus errata and corrections. Other parties served proposed testimony and rebuttal testimony during early 2005 on all issues, including the definition of the agricultural class.

2.2. BART and SierraPine Issues

In May 2005, the San Francisco Bay Area Rapid Transit District (BART) and SierraPine Ltd. (SierraPine) asked that a limited issue specific to each be decided on an expedited schedule. Their request was granted. On July 21, 2005, we found that neither BART nor SierraPine are subject to certain charges associated with applicant's energy recovery bonds (ERBs).[1] (D.05-07-041.)

2.3. May 13 Settlement and Five Supplemental Settlements

On February 17, 2005, applicant served notice on all parties of a settlement conference. (Rule 51.1(b) of the Commission's Rules of Practice and Procedure (Rules).) On March 9, 2005, PG&E hosted the initial settlement conference. Additional settlement discussions were held in subsequent weeks by conference call.

On May 13, 2005, applicant and settling parties filed a motion for Commission adoption of a settlement resolving marginal cost, revenue allocation, and limited rate design matters (May 13, 2005 Settlement). On June 3, 2005, applicant and settling parties filed a motion for Commission adoption of

[1] The ERBs are authorized and used to reduce ratepayer costs related to applicant's bankruptcy reorganization. (See D.04-11-015.)

two supplemental settlements: Supplemental Residential Settlement and Supplemental Small Light and Power Settlement. On July 8, 2005, applicant and settling parties filed a motion for Commission adoption of three supplemental settlements: Supplemental Light and Power Settlement, Supplemental Agricultural Settlement, and Supplemental Energy Recovery Bond Settlement.

On November ___, 2005, we found that the May 13 Settlement and five Supplemental Settlements meet our tests for adoption. (D.05-11-___.) As a result, all issues are resolved, except one: the definition of the agricultural class.

2.4. Agricultural Definition Issue

At hearing on May 23, 2005, parties recommended schedule revision to permit consideration of the May 13 Settlement along with other possible settlements. By ruling dated May 24, 2005, a revised schedule was adopted, with further hearing set for June 6, 2005.

On June 2, 2005, a motion was filed by PG&E, the Agricultural Energy Consumers Association (AECA) and the California Farm Bureau Federation (CFBF). Moving parties requested additional time to address the agricultural class definition issue, with hearing set, as needed, in September 2005. The motion was granted.

On September 2, 2005, PG&E, AECA and CFBF (Settling Parties) filed a motion for adoption of an Agricultural Definition Settlement (Settlement). On September 13, 2005, hearing was rescheduled from September to October 6, 2005, in order to permit efficient use of resources by first allowing comments to be filed. (Rule 51.4.)

On September 26, 2005, an emergency motion to intervene was filed by Almond Hullers and Processors Association and Mercado Latino, Inc. (Contesting Parties).[2] On September 30, 2005, the motion was granted. On October 3, 2005, Contesting Parties filed comments in opposition to the Agricultural Definition Settlement, and stated their intention to fully participate at hearing on October 6, 2005.

Evidentiary hearing was held October 6, 2005. Settling parties amended the settlement on October 6, 2005. The settlement and the addendum are contained in Appendix B.

Opening briefs were filed and served on October 17, 2005 by Settling Parties, Contesting Parties, and also separately by AECA and CFBF. Reply briefs were filed and served on October 20, 2005 by PG&E, AECA, CFBF, and Contesting Parties. The matter was submitted for Commission decision on October 20, 2005.

3. Terms of Settlement

The major points of the Agricultural Definition Settlement, as amended, are as follows. Settling Parties recommend language for PG&E's agricultural tariffs similar to the outcome reached in D.05-05-048. (Almond Tree Hulling Co. et al. vs. PG&E, Case No. 04-01-020.) In particular, bill adjustments are to be made for each customer reclassified from a commercial to an agricultural tariff as a result of a Commission decision in a formal complaint proceeding, if the complaint was filed with the Commission within 180 days of PG&E's written

[2] The motion also included Paramount Farms. By letter dated September 28, 2005, Paramount Farms stated that it should not have been included on the motion.

denial of the customer's written request to be on agricultural rates. The adjustment will be equal to the difference between what the customer was billed on the commercial tariff and would have been billed on the agricultural tariff, and will be calculated prospectively from the date of the customer's written request to be on agricultural rates. Bill adjustments for customers on time-of-use (TOU) commercial rates are to be calculated using agricultural TOU rates, and bill adjustments for customers on non-TOU commercial rates are to be calculated using non-TOU agricultural rates. Bill adjustments are calculated without interest. The customer will not be billed if the adjustment is a net charge rather than a net refund. No adjustment will apply if the formal complaint was not filed with the Commission within 180 days of PG&E's written denial of customer's written request to be placed on agricultural rates.

In addition, PG&E agrees not to propose a change in the agricultural class definition in its opening testimony in Phase 2 of its 2007 test year GRC. PG&E also agrees that it will not seek any change in the agricultural class definition before September 1, 2006 and, before advocating any change, will confer with AECA and CFBF. In turn, if PG&E seeks a change, AECA and CFBF agree to cooperate with PG&E in pursuing an expedited schedule for resolution of the issue.

4. Consideration of Proposed Settlement

4.1. Standards of Review

We have reviewed settlements going as far back as at least 1988,[3] and have specific rules regarding approval of settlements:

> "The Commission will not approve stipulations or settlements whether contested or uncontested, unless the stipulation or settlement is reasonable in light of the whole record, consistent with law, and in the public interest." (Rule 51.1(e).)

In assessing these factors, we have often acknowledged California's strong public policy favoring settlements. This policy supports many worthwhile goals, such as reducing litigation expenses, conserving scarce resources of parties and the Commission, and allowing parties to reduce the risk that litigation will produce unacceptable results.

We consider individual settlement provisions in our assessment of settlements but, in light of strong public policy favoring settlements, we do not base our conclusion on whether any single provision is the optimal result. Rather, we determine whether the settlement as a whole produces a just and reasonable outcome.

Settling Parties argue here that the amended Agricultural Definition Settlement as a whole meets the tests of being reasonable in light of the whole record, consistent with law, and in the public interest. We disagree as explained below.

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[3] See, for example, D.88-12-083 (30 CPUC2d 189), D.90-08-068 (37 CPUC2d 346), D.92-12-019 (46 CPUC2d, 538), D.93-04-056 (49 CPUC2d 72), D.93-12-016 (52 CPUC2d 317), D.96-01-011 (64 CPUC2d 241), D.98-04-064 (80 CPUC2d 1), D.03-12-035, D.04-02-062, D.04-05-055, D.05-03-022, D.05-06-016, D.05-06-032, and D.05-11-___.

4.2. Reasonable in Light of Whole Record

The Agricultural Definition Settlement largely does two things: (1) addresses billing adjustments, and (2) defers further consideration of the issue. It neither clarifies the definition, nor redefines the agricultural class. This is unreasonable in light of the whole record.

The record shows the desirability of clarification or redefinition. In 1988, we adopted an unopposed recommendation made by PG&E to revise the definition of the agricultural class from an "on the farm/off the farm" distinction to a definition potentially permitting greater use so long as that use did not "change the form of the agricultural product."[4] This revision addressed a perception that inequities had resulted from the prior "on the farm/off the farm" distinction. Even though the use of "change of form" was arguably imprecise and subjective, a consensus lasted for nearly a decade about which activities were and were not covered. The consensus began to fray in the mid-1990s, however, and required Commission interpretation of the language.[5] As PG&E points out, the result of several challenges to its agricultural applicability criteria has been a broadening of the agricultural class, largely as customers sought access to lower cost agricultural rates.[6]

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[4] Exhibit 4, page 3-14 to 3-15; D.88-12-031 (30 CPUD2d 44, 54-55); D.03-04-059, *mimeo*., page 17.

[5] D.97-09-042, *Producers Dairy Foods, Inc. v. PG&E* (74 CPUC2d 677); D.03-04-059, *Air-Way Gins, Inc., et al., v. PG&E*; D.05-05-048, *Almond Tree Hulling, et al., v. PG&E*.

[6] At current estimated rates effective January 1, 2006, customers on average save 23% by moving from commercial to agricultural rates. This ratio is calculated by dividing the average small light and power rate by the average agricultural rate (in cents per

Footnote continued on next page

In interpreting the tariff language, we have noted that "the debate in these cases has sometimes taken on a metaphysical tone," there has been a "lack of clarity in [PG&E's] eligibility statement," and there is a "delphic quality of the change-of-form language." (D.03-04-059, Air-Way Gins, at *mimeo.*, page 18.[7]) Interpreting the "change of form" language has also involved such complexities as determining whether "tearing or disassociation" of a product changes its form.[8]

Similarly, we have more recently said of PG&E 's tariff language that it "does not give clear guidance as to when utility customers involved in producing or processing an agricultural product…qualify to receive electric service at an agricultural rate." (D.05-05-048, *mimeo.*, page 15.) We have also stated that the key phrase in determining eligibility (i.e., change in the form of the product) "is subject to conflicting interpretations," that "the tariff has led to almost metaphysical arguments about whether a particular agricultural process should qualify for an agricultural rate," and that "the change-of-form language…can be considered subjective and imprecise…" (*Id.*, pages 15 and 17.)

In support of its initially proposed change, PG&E said that the:

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kilowatt-hour) from the May 13 Settlement: 13.858/11.275 = 1.229. (See D.05-11-___, *mimeo.*, page 6.)

[7] One example of the metaphysical nature of this work is the following conclusion of law in the Air-Way Gins decision: "Cotton ginning is not analogous to the slaughtering of animals, because the later clearly and drastically changes the form of the live animal." (Conclusion of Law 9, D.03-04-059, *mimeo.*, page 32.)

[8] For example: "We rejected arguments by PG&E that separating the fiber from the seeds involves a change in the form of the cotton because both the seed and the fiber emerge intact from the process, even if some 'tearing' or 'disassociation' occurs." (D.05-05-048, Almond Hullers, *mimeo.*, page 11.)

> "dividing line between the agricultural and commercial class has simply presented so many issues and so much consternation following almost 10 years of litigation that a change was needed. The Commission decisions which have been rendered on the 'change of form' analysis have left PG&E with many more questions than answers concerning agricultural rate applicability." (Reply Brief, pages 6-7.)

As a result, PG&E initially sought here to reduce the likelihood of additional agricultural-related litigation by proposing a narrower, more precise definition. In doing so, PG&E acknowledged "that any change in the agricultural definition is important to the agricultural community at large, and [PG&E] is open to appropriate discussion or negotiation on this issue." (Exhibit 4, page 3-15.)

AECA and CFBF agree there is a problem. For example, AECA says it "agrees with PG&E that the current 'change of form' definition is arbitrary and needs revision." (Exhibit 451, page 30.) CFBF is "sympathetic with PG&E's efforts to resolve the definition of the agricultural class in a way that leads to stable class definitions, and realizes that the line between on-farm preparation of the crop for market and a commercial business processing crops is a difficult one to draw." (Exhibit 601, page 9.) CFBF "agrees with AECA that an improved definition of an agricultural customer is probably needed…" (Exhibit 602, page 10.). While both AECA and CFBF oppose PG&E's proposal (and CFBF opposes AECA's initial proposal), they nonetheless share a concern that a revised definition will eventually be implemented. After assessing that risk, they agree it is in their best interest to "postpone the evil day" of PG&E's proposal being adopted, with that delay achieved via the Settlement. (Reporter's Transcript, Vol. 9, page 235.)

We are not persuaded that postponement is reasonable in light of the whole record. Additional clarity in defining the class is essentially unopposed. The only issue is what that clarity should be. The Settlement not only fails to solve the problem, it perpetuates the problem by ensuring that the current arguably vague definition remains in place for quite some time.

We ultimately may or may not redefine the class after hearing from all parties and giving the matter full consideration in the appropriate forum.[9] Postponing consideration of the issue, however, is unreasonable in light of the whole record.

4.3. Consistent with Law

One key feature of the Settlement is its treatment of billing adjustments. In particular, it limits refunds to a period beginning from the date of the customer's written request to be placed on agricultural rates, consistent with our finding in D.05-05-048.

On rehearing of D.05-05-048, however, we lifted that limitation. We now apply the full three years prior to the date of a complainant's original request, consistent with PG&E's tariff Rule 17.1 and Pub. Util. Code § 736.[10] When balanced against a full range of statutory and tariff interpretation principles, we concluded that the limitation should be lifted and the three years should apply.

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[9] Despite PG&E's request for clarification in its application for rehearing of D.05-05-048, we recently declined to give further guidance on the "change of form" language. We noted that the disposition of an application for rehearing was not the proper forum for requesting further guidance or clarification of this matter but perhaps a "petition for modification constitutes a more proper vehicle." (D.05-10-049, *mimeo*., page 9.)

[10] Pursuant to § 736, in some cases the three years may be extended by six months. All statutory references are to the Public Utilities Code unless stated otherwise.

(D.05-10-049, *mimeo.*, pages 9-14.) We decline to place a limited refund method in tariff here that is inconsistent with our most recent finding on the subject.

An important reason for our reversal of the limited refund method was that in D.05-05-048 we had reconciled ambiguous tariff language in the agricultural eligibility statement in favor of the utility rather than the customer. This determination conflicts with the rules of tariff interpretation, which require that ambiguous tariff provisions be resolved in favor of the customer and against the utility. (D.05-10-049, *mimeo.*, page 12.) While we could approve the Settlement for the purpose of adopting unambiguous language which improves certainty, even if it resolves the ambiguity in favor of the utility, we decline to do so. The facts of individual cases should be our guide, not a narrow application simply to improve clarity. Moreover, ambiguous tariff language should be resolved in favor or the customer. If we adopt language here to reduce ambiguity and increase clarity, it should be in favor of the customer (*e.g.*, three years), not the utility (e.g. date of complaint).

In addition, the Settlement is excessively narrow by limiting the full three-year statutory period to the few cases where PG&E had previously determined a specific customer's account to belong on agricultural rates but had inadvertently placed the customer on commercial rates due to clerical error. There may be more cases than simply those due to clerical error after a specific predetermination wherein a three-year refund provides the equitable, just and reasonable outcome consistent with the law. In particular, our view is that "absent extraordinary circumstances, we have generally applied the statutory 3-year period for refunds." (D.05-10-049, *mimeo.*, page 14.) We are not persuaded that the Settlement finds the proper balance under the law.

4.4. In the Public Interest

The Settlement is not in the public interest in at least three ways: (1) it "gags" PG&E, (2) it defers rather than resolves the issue, and (3) it limits refunds.

4.4.1. Gags PG&E

The Settlement requires that PG&E not propose a change in the agricultural class definition in PG&E's opening testimony in Phase 2 of its 2007 GRC. That showing is now due by March 1, 2006.[11] While we do not expect it, there may be circumstances under which PG&E's Phase 2 opening testimony in its 2007 GRC might be postponed for good cause, just as Phase 2 of this GRC was postponed. If so, PG&E is prohibited from making a proposal in that opening testimony, whether later in 2006 or beyond. Even if the 2007 GRC remains on track, PG&E agrees it will not seek any change in the definition any time before September 1, 2006. For example, PG&E agrees to be silent in its rebuttal testimony (*e.g.*, should the issue be raised by AECA or CFBF) if PG&E's rebuttal be due before September 1, 2006.[12] Assuming a continuation of a three year GRC cycle, this effectively silences PG&E until its 2010 GRC.

Similarly, PG&E is to be silent in any other proceeding wherein this matter might be raised before September 1, 2006. If the matter is considered in a petition for modification (as we suggested in D.05-10-049 might be an appropriate vehicle) or an Order Instituting Investigation (OII), PG&E is silenced until at least September 1, 2006.

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[11] See footnote 8 in D.05-11-___.

[12] Even if rebuttal testimony is offered after September 1, 2006, the experience in this proceeding shows that it is unlikely any party other than PG&E will propose a change in the agricultural definition in their direct testimony. As such, it would be beyond the scope of normal rebuttal for PG&E to raise it for the first time in its rebuttal testimony. This essentially keeps the issue out of the 2007 GRC.

AECA and CFBF believe this silencing of PG&E is in the public interest because it puts off the "evil day" when the class definition might be narrowed, with resulting higher rates for some of their members. We are not persuaded. The result will not necessarily be a narrowing of the class definition. Rather, for example, it could essentially be the same class but defined with greater clarity and precision. It could arguably even be modified to expand the class (e.g., adding "agricultural commodity processing customers").[13]

Even if the result is a narrowing of the class with higher rates for some displaced customers, that is not necessarily contrary to the public interest. The public interest is more than the interest of some agricultural customers. The public interest is the interest of the public, including all customers.

We have reasonably defined classes and properly assessed rates to customers based on all relevant factors, including costs. We welcome thoughtful proposals and a robust debate, however, when improvements may be desirable or required. The result may or may not be a narrowing or expansion of agricultural class eligibility, but will—to the extent necessary and reasonable—be a class definition that has greater clarity, objectivity and precision, and is less subject to conflict. We do not here prejudge whether we will retrain, clarify or

[13] Contesting Parties assert that the Legislature has clearly stated public policy in favor of expanding the agricultural class definition, citing § 740.11 in support, which says in relevant part: "…the Legislature strongly urges the commission to consider providing the option to all agricultural commodity processing customers to be included in the definition of customers eligible to be served under agricultural tariffs, consistent with its other constitutional and statutory objectives, and to the extent it does not result in cost shifting to other customer classes. "

modify the class definition, but we are not persuaded by AECA and CFBF that silencing PG&E is in the public interest.

4.4.2. Defers Rather Than Resolves Issue

The Settlement also conflicts with the public interest by deferring rather than resolving the issue. Our recent decisions find that the current class definition can be unclear, and that the "change of form" language can be considered subjective and imprecise. PG&E and the agricultural community have an interest in avoiding otherwise likely litigation in a series of complaint cases, and reaching conclusion on this matter. The public interest weighs in favor of hearing proposals, engaging in serious discussion and satisfactorily resolving the issue, not potentially deferring the matter to 2010.

AECA and CFBF contend that the Settlement avoids a potentially worse outcome should the Commission adopt PG&E's proposed definition. They believe deferral is better than an adverse outcome. As explained above, we are not convinced that the outcome would necessarily be worse, and that deferral serves the public interest.

The Settlement produces a minimum one-year delay (until at least September 1, 2006) before the issue is next presented for consideration. CFBF asserts that this is intended to provide parties with sufficient time to work together to develop, if necessary, a better agricultural class definition meeting the objectives of improved clarity, reduced litigation, and protection of the interests of existing and future agricultural customers. We are not persuaded this additional time is needed.

PG&E and the agricultural industry have been faced with these concerns since at least 1996. (See D.97-09-042, *Producers Dairy Foods,* which resulted from a complaint filed in 1996, Case No. 96-09-021.) Considerable thought and work

has already gone into this issue. PG&E, AECA and CFBF have been working separately and together to develop a better definition since the filing of this 2003 Phase 2 application on June 17, 2004. They will have several additional months before PG&E files its 2007 GRC Phase 2 showing on or about March 1, 2006. They will then have several months to continue to work on their own positions and joint positions. AECA and CFBF can obtain data from PG&E via data requests, and can seek rulings on motions to compel, if necessary. The issue merits further consideration and reasonable resolution, not deferral. Sufficient time exists to address this issue, and the Settlement's deferral of the issue is inconsistent with the public interest.

4.4.3. Limits Refunds

Settling Parties argue that deferring clarification of the eligibility statement permits seeing whether the Settlement results in reduced frequency and level of litigation, and greater stability for the agricultural class. According to Settling Parties, this reduction in litigation is largely accomplished by the Settlement's limitation of the size of refunds, along with limiting the contingency fee earned as a percentage of the refunds by Utility Cost Management, the entity responsible for bringing most if not all of the litigation on this issue to the Commission. We are not persuaded this is in the public interest.

Frivolous litigation is to be avoided. Here, however, whether or not the product has changed form, and the dividing line between commercial and agricultural, can be unclear. We do not think the avoidance of potentially meritorious litigation over what might in some cases be unclear eligibility is in the public interest. Rather, if clarification is needed, we seek to clarify the definition (so that customers know if they are included or excluded), not simply to reduce the incentive for a customer to find out.

Even if we agreed with the concept of limiting refunds, the incentive to litigate is not likely to be substantially reduced. Reduced customer savings by limiting refunds can be far outweighed by ongoing savings that may accumulate over many years into the future.

Finally, Settling Parties argue that a reduction in the number of complaint cases is a benefit to the Commission. We are mindful of our limited resources, but we are here to do the public's work. We will not sacrifice potentially justified bill adjustments for a reduction in our workload.

Thus, we conclude that this Settlement is not in the public interest.

4.5. Conclusion

The Settlement is neither reasonable in light of the whole record, consistent with law, nor in the public interest. The Settlement as a whole fails to achieve a sufficiently just and reasonable outcome to merit our adoption. The motion to adopt the proposed settlement should be denied.

5. Agricultural Class Definition

The record does not support changing the agricultural definition at this time. In brief, the record is that PG&E initially proposed a new class definition that more closely paralleled the "on the farm" definition in place prior to 1989, and in Southern California Edison Company's tariffs. The proposal required that 70% or more of the usage be "on the farm," and excluded customers with demands over 500 kilowatts (kW). PG&E also proposed that customers on an agricultural schedule on or before June 17, 2004 (the filing date of this application) be "grandfathered," remaining on agricultural rates even if their operations would not meet the new definition. As proposed, the grandfathering provision would apply until such time as there was a change in farm ownership. PG&E asserted that its proposal, with the grandfathering provision, would result

in fewer new customers qualifying for agricultural rates, but there would be little migration of existing customers out of the class.

AECA initially proposed a definition that included "preparatory" activities necessary to bring a product to market (e.g., pasteurizing milk, ginning cotton, hulling almonds). AECA opposed PG&E's 500 kW limit and the "on the farm" location requirement. AECA subsequently urged no change be adopted in this GRC, but that the Commission order a workshop for the three investor owned utilities and agricultural community to create a consistent and fair statewide definition. If the workshop was unsuccessful, AECA recommended the Commission issue an OII. AECA also noted that changes may result from the Critical Peak Pricing (CPP) proceeding (Application (A.) 05-01-016, A.05-01-017 and A.05-01-018). AECA expressed concern that likely upcoming CPP changes, along with other possible changes, make "too many moving parts" for the Commission to render an informed decision here.

CFBF opposed PG&E's proposal. CFBF contended the definition must be flexible enough to incorporate efficient farming practices (*e.g.*, a group of farmers collectively purchasing one large piece of equipment that saves energy and money). CFBF also opposed AECA's initially proposed definition, but supported an OII. CFBF is also concerned that PG&E's grandfathering proposal fails to adequately account for intra-family farm transfers, which CFBF asserts is nearly 80% of changes in farm ownership.

We decline to adopt a new agricultural class definition based on this record. The proposals are not sufficiently developed and vetted to merit adoption. We similarly decline to craft our own given unresolved issues (*e.g.*, eligibility of "agricultural commodity processing customers," grandfathering). Rather, we retain the status quo (as sought by AECA and CFBF via the

Settlement). At the same time, we will neither silence PG&E, nor purposefully defer the issue. We encourage parties to continue to address the concerns that have been raised. If PG&E elects to, PG&E may make another proposal in its 2007 GRC Phase 2 showing. That proposal—compared to the current definition—should have greater clarity, be more objective, be more precise, be less metaphysical, be less subject to conflicting interpretations, and should resolve whether (or the precise degree to which) processing an agricultural product qualifies for agricultural rates.

We look forward to another round of thoughtful proposals and a vigorous debate so that parties may assist the Commission reach an outcome that reasonably satisfies competing needs. We encourage parties to consider reasonable settlements in the 2007 GRC, but are unlikely to look favorably on a settlement that fails to improve the definition of the agricultural class. We will give the matter further consideration to the extent brought to us by parties, and we do not here prejudge the outcome.

All identified issues are now resolved. This proceeding may be closed.

6. Comments on Proposed Decision

On November 14, 2005, the proposed decision of ALJ Burton W. Mattson was filed and served on parties in accordance with Public Utilities Code Section 311(d) and Rule 77.1 of the Commission's Rules of Practice and Procedure. Comments were filed and served on _____, 2005, by _____. Reply comments were filed and served on _____, 2005, by _____.

7. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner. Burton W. Mattson is the assigned ALJ in this proceeding.

Findings of Fact

1. On September 2, 2005, Settling Parties filed a motion for adoption of an Agricultural Definition Settlement; on October 3, 2005, Contesting Parties filed comments in opposition to the Settlement; and on October 6, 2005, evidentiary hearing was held on the contested Settlement.

2. The Settlement largely does two things: (a) addresses billing adjustments (in a manner that limits refunds using a method the Commission has now reversed) and (b) defers further consideration of the class definition issue.

3. PG&E's current agricultural eligibility statement (based on whether or not the electricity is used to "change the form of the agricultural product") has led to debates that have sometimes taken on a metaphysical tone, can be subject to conflicting interpretations, can present questions of where to draw the line between agricultural and commercial use, and has led to nearly 10 years of litigation, thereby demonstrating the desirability of clarification or redefinition of the class.

4. The Settlement not only fails to solve the definition problem, it perpetuates the problem by ensuring that the current definition remains for quite some time.

5. The Settlement unreasonably silences PG&E, defers rather than resolves the agricultural class definition issue, and limits refunds.

6. Parties have had, and will have, sufficient time to consider and address this issue, and the Settlement's deferral of the issue is inconsistent with the public interest.

7. Avoidance of potentially meritorious litigation over what might in some cases be an unclear eligibility statement is not in public interest.

8. The Settlement is neither reasonable in light of the whole record, consistent with law, nor in the public interest, and the Settlement as a whole fails to achieve a sufficiently just and reasonable outcome to merit its adoption.

9. The record does not contain sufficiently developed and vetted proposals to merit a change in the agricultural eligibility statement at this time.

Conclusions of Law

1. The Commission will not approve a settlement unless it is reasonable in light of the whole record, consistent with law, and in the public interest.

2. The Commission considers individual settlement provisions in its assessment of settlements but, in light of strong public policy favoring settlements, does not base its conclusion on whether any single provision is the optimal result, but rather whether the settlement as a whole produces a just and reasonable outcome.

3. On rehearing of D.05-05-048, the Commission balanced a full range of statutory and tariff interpretation principles and concluded that the refund limitation adopted in D.05-05-048 should be lifted, thereby permitting refunds for three years prior to the date of a complainant's original request, consistent with PG&E's tariff Rule 17.1 and § 736.

4. Rules of tariff interpretation require that ambiguous tariff provisions be resolved in favor of the customer and against the utility.

5. The facts of individual cases should guide outcomes, not a narrow application of a refund provision in the utility's favor simply to improve clarity, and, absent extraordinary circumstances, the statutory three-year period for refunds should apply.

6. The motion to adopt the proposed settlement should be denied.

7. The current agricultural class eligibility statement should not be modified at this time.

8. This order should be effective immediately so that certainty is provided to customers and parties regarding retention or modification of the agricultural class eligibility statement, clarity is provided regarding the period for refunds, and parties may continue to examine the agricultural class definition without delay.

FINAL ORDER

IT IS ORDERED that:

1. The motion dated September 2, 2005 for adoption of the Agricultural Definition Settlement, as amended by Settling Parties on October 6, 2005, is denied.
2. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Mattson Notice of Availability